IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2030 OF 2006.

Mrs.Ezabel F.Nunes
Indian Inhabitant, aged 61 years,
seniro citizen, residing at
House No.1597 situated at
Hissa No.1/2, on a plot bearing
survey No.21 at Holi Bazar,
Digha village, Sandor, Vasai
West, Dist. Thane. ... Petitioner.

Versus.

1. State of Maharashtra

2. The District Magistrate, Thane.

3. Union Bank of India,
(A body corporate constituted and
functioning under the Banking
Office Acquisition and Transfer
of Undertaking Act, 1970) having
its Head Office at Union Bank
Bhavan, 239, Vidhan Bhavan Marg,
Nariman Point, Mumbai 400 021,
having one of Branch office at
56, Karim Building, Mohammad
Ali Road, Mumbai 400 003
through its Authorised Officer/

Shri R.D.Soni with Ms.S.T.Mohite for the Petitioner.

Shri Y.M.Nakhawa, A.P.P. for Respondent No.1 and 2.

Shri N.N.Amin for the Respondent No.3.

CORAM : ABHAY S.OKA, J.

DATED : 12th October, 2006.

ORAL JUDGMENT.:

1. Rule. The learned Counsel appearing for the Respondent No.3 waives service. The learned A.P.P. waives service for Respondents Nos.1 and 2.

2. The challenge in this petition is to the order dated 28th July 2006 passed by the learned District Magistrate, Thane under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the said Act of 2002"). Apart from the challenge on merits, the learned Counsel for the Petitioner invited my attention to the Roznama of the proceedings and submitted that the affidavit containing submissions filed by the Petitioner on 31st July 2006 has not been considered as the impugned order was already passed on 28th July 2006.

3. After hearing the learned Advocates appearing for the parties and after perusing the roznama of the proceedings, I find that the order impugned contravenes the principles of natural justice. On 3rd July 2006, the hearing before the learned District Magistrate was adjourned to 25th September 2006. On an application made by the 3rd Respondent, the date of hearing was changed to 28th July 2006. Noting made in the proceedings shows that on 28th July 2006 arguments on behalf of the parties were advanced. A noting is made that the Petitioner was permitted to file written submissions and accordingly on 31st July 2006, an affidavit of the Petitioner was filed. In fact the concerned Clerk had put up the affidavit dated 31st July

2006 before the learned District Magistrate. The proceedings also record that a draft of the order was placed before the learned District Magistrate for approval. The impugned order has been passed on 28th July 2006. Though the Petitioner was expressly permitted to file the submissions in writing and though the affidavit containing the submissions was in fact taken on record on 31st July 2006, it is obvious that the learned District Magistrate has not considered the said affidavit filed by the Petitioner. This fact becomes obvious as the impugned order is passed on 28th July 2006. Only on this ground, the impugned order deserves to be quashed and set aside.

4. As pointed out earlier, the oral submissions were already made before the learned District Magistrate. Therefore, unless the learned District Magistrate himself wants any clarification on any point, it will not be necessary to hear further arguments and the learned District Magistrate will pass appropriate order after considering all the material including the affidavit dated 31st July 2006 filed by the Petitioner.

5. Hence the writ petition is disposed of by the following order:

i) The impugned order dated 28th July 2006 is quashed and set aside.

ii) The learned District Magistrate, Thane, will pass appropriate order in the light of the observations made in this judgment as expeditiously as possible and preferably within a period of six weeks from today. The learned District Magistrate will give notice to the parties of the date fixed for pronouncement of the order.

iii) All contentions of the parties on merits are kept open.

iv) Rule is partly made absolute in the above terms.

Judge.